IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5098 of 2000
with
CIVIL APPLICATION No 6056 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

APOLLO TYRES LTD

Versus

APPELLATE AUTHORITY FOR INDUSTRIAL & FINANCIAL RECONST

Appearance:
MR DA DAVE for M/S TRIVEDI & GUPTA for Petitioner
MR RM DESAI for Respondent No. 1
RULE SERVED for Respondent No. 2,15
SINGHI & BUCH ASSO. for Respondent No. 5
MR KB PUJARA for Respondent No. 9
MR RD DAVE for Respondent No. 10
NOTICE SERVED BY DS for Respondent No. 11
MR DEVESH A BHATT for Respondent No. 12

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 15/06/2001

ORAL JUDGEMENT

This petition is filed against the orders of the Board for Industrial & Financial Reconstruction (hereinafter referred to as "the BIFR") as confirmed by the Appellate Authority for Industrial & Reconstruction (hereinafter referred to as "the AAIFR" or "the appellate authority") under the Sick Industrial Companies (Special Provisions) Act, 1956 (hereinafter referred to as "the Act" or "the SICA").

2. M/s Gujarat Perstrop Electronics Ltd. (GPEL) having its registered office at Gandhinagar was registered as a sick industrial Company under the SICA. The IDBI was appointed as the Operating Agency for preparing the rehabilitation scheme. The IDBI accordingly prepared and circulated a draft rehabilitation scheme which is annexed to this petition at Annexure "U" (pp. 196-213). The revival scheme as proposed by the IDBI in its capacity as the Operating Agency contemplated certain reliefs and concessions. Para 4(i) of the scheme, with which we are mainly concerned in this petition, read as under :-

"4(i) To accept from Apollo Tyres Ltd. as guarantor of the loans granted to GPEL, payment of entire principal term loan (Rs.1167 lakh), and 50% simple interest outstanding as on September 30, 1998 (Rs.528 lakh) aggregating about Rs.1695 lakh in the following manner :-

(a) entire principal amount (Rs.1157 lakh) would be deposited in a non-interest bearing No Lien account with respective institutions or with IDBI immediately upon receipt of approval from respective institutions pending sanction of the scheme by BIFR and shall be appropriated towards principal;

(b) the simple interest component of the crystallised OTS dues (Rs.528 lakh) to be paid by way of allotment of equity shares of Apollo Tyres Ltd. (ATL) at the price to be determined as per SEBI formula. The effective date for crystallising the price would be March 29, 1999. Such allotment and issue of shares shall not be later than October 31, 1999;

(c) the crystallised amount as at (1) above to carry interest @ 14.5% p.a. w.e.f. October 1, 1998 till date of cash payment and interest shall be paid alongwith instalments of cash payment.

(d) Shri Onkar Kanwar and his associates would undertake to buy back the shares of ATL of the issue price plus interest 14.5% p.a. from the effective date in the event the market price of ATL's shares did not yield above consideration. This undertaking would be valid for 1 month from the date of issue of shares.

(ii) waiver of balance amount of simple interest, entire compound interest, liquidated damages outstanding as on September 30, 1998 (Rs.1315 lakhs)."

Para 4(B) pertained to the term loans granted by Bank of Baroda and Union Bank of India. Since there is no dispute about the terms of settlement with the said Banks, it is not necessary to refer to the relevant paragraphs of the scheme pertaining to the said Banks.

3. During pendency of the proceedings before the BIFR and before the BIFR passed the orders rejecting the scheme in view of the opposition from some of the secured creditors, the petitioner Company, Apollo Tyres Ltd., the promoter Company which was to take over the sick Company under the above scheme, paid cash payments of 100% of the principal amounts to the Banks and deposited 100% of the principal amounts payable to the institutions in the no lien account/s. The petitioner also paid 50% of the interest payable to the Banks in cash. Further amounts of interest as per the particulars given below were also deposited with the institutions as per the following particulars :-

Sr. No.	Name of FIs/Banks	Payment Date	Principal	Interest	Total
	Financial Institutions				
1.	IDBI	31.03.99	504.00	36.24	540.24
2.	ICICI	18.06.99	312.27	32.25	344.52
3.	IFCI	08.07.99	257.64	28.65	286.29
4.	UTI	23.07.99	93.00	10.90	103.90

Total (A)			1166.91	108.04	1274.95
	Banks				
1.	BOB	13.07.99	250.00	28.30	278.30
		30.11.99	-	162.52	162.52
2.	UBI	02.11.99	50.00	7.89	57.89
		02.12.99	-	24.13	24.12
Total (B)			300.00	222.84	522.84
Grand Total (A+B)			1466.91	330.88	1797.79

4. The dispute, however, arose between the petitioner Company and some of the financial institutions about the manner in which the price of equity shares of the petitioner Company, Apollo Tyres Ltd. (ATL) was to be determined. It is not necessary to set out the details of the said controversy as the same no longer survives by the time the petition has reached hearing before this Court. Suffice it to state that in view of the objections raised by the financial institutions, the BIFR passed order dated 16.3.2000 rejecting the draft scheme. The appellate authority under the SICA dismissed the appeal. Hence, the petitioner approached this Court mainly contending that the BIFR is not denuded of its power to frame a rehabilitation and revival scheme merely because some of the secured creditors raise unreasonable objections or place an unreasonable interpretation on the draft scheme regarding determination of the price of the equity shares of the petitioner Company to be allotted to the financial institutions against the interest component.

5. While issuing notice on 23.5.2000, this Court granted ad-interim relief staying the operation of the advertisement published on 27.4.2000 inviting offers for take-over/merger/amalgamation/leasing etc. of the above named sick Company.

6. In response to the notice, affidavit in reply came to be filed on behalf of the ICICI and another affidavit in reply came to be filed on behalf of IDBI so also on behalf of IFCI. It is not necessary to refer to the stand taken up in those affidavits because when the petition came up for hearing before this Court on 6.10.2000, only the IDBI continued to object to the

sanction of the scheme. All the other financial institutions i.e. ICICI, IFCI, UTI and the banks i.e. BOB and UBI had not only accepted the principal amounts due and payable to them by the sick Company in question, but they had either accepted the cash payments made by the petitioner against 50% simple interest as per the draft scheme or had agreed in principle to accept the petitioner Company's offer of cash payment of 50% simple interest in lieu of the equity shares of the petitioner Company. As far as the objections raised by the IDBI were concerned, the petitioner Company agreed to make a representation to the IDBI and the hearing of the petitioner was adjourned to 18.10.2000. On 18.10.2000, the Court was informed that the IDBI had rejected the representation made by the petitioner. The petition was, therefore, heard on merits at the admission stage. In view of the fact that the ICICI, IFCI, UTI, BOB and UBI had already settled the matter with the petitioner Company and the petitioner had also made payments to or deposited the dues with all the creditors as per the settlement except a part of the interest amount with the IDBI and since the principal amounts due and paid to the secured creditors was to the tune of Rs.1466.91 lakhs and the interest amount of more than Rs.550 lakhs was also paid to all the creditors other than the IDBI and the only dispute was with regard to the mode of payment of Rs.224 lakhs (being 50% of the interest amount till 30.9.1995) to the IDBI, the Court issued Rule and made it returnable on 15.12.2000 and continued the ad-interim relief which was granted earlier including the ad-interim relief granted against continuance of the proceedings before the BIFR.

7. The petition has again been moved for hearing before the Court in view of Civil Application No. 6056 of 2001 filed by the original petitioner pointing out that after admission of the petition, the IDBI, the sole creditor whose debt was outstanding but with whom the petitioner had already deposited the principal amount of Rs.504 lakhs, had approved and accepted the settlement proposal for receiving the amount of interest as per the draft scheme in cash instead of insisting for getting such amount in shares. A copy of the letter dated 30.4.2001 from the IDBI to the petitioner Company is produced at Annexure "B" to the above numbered Civil Application. The relevant paragraphs of the said letter read as under :-

"2. Your request has been considered and we are agreeable to modify the OTS proposal conveyed to you vide our letter dated March 31, 1999 by

accepting 50% of simple interest as on September 30, 1998 alongwith interest @ 14.5% p.a. with effect from October 1, 1998 till date of actual cash payment in lieu of Equity shares are indicated in our earlier letter, on the terms and conditions detailed below :-

(a) The OTS amount is to be paid by Apollo Tyres Ltd. (ATL) in cash up front. IDBI shall have the right to appropriate the OTS amount towards GPEL's dues;

(b) the OTS amount to carry interest @ 14.5% p.a. with effect from October 1, 1998 till date of cash payment. Such interest shall be paid alongwith the instalment of cash payment.

3. Other terms and conditions of our letter dated March 31, 1999 shall remain unchanged."

8. Mr RM Desai, learned counsel appearing for the IDBI confirms that the IDBI has already been paid the principal amount as well as the amount of interest as per the letter dated 30.4.2001 and the IDBI has no objection to the original draft scheme (Annexure "U" - Pg.196) being sanctioned by this Court, but at the same time Mr Desai submits that the legal contentions advanced by the petitioner in the original petition may not be accepted as the IDBI is not agreeable to any proposition being laid down that the BIFR has the power to sanction a rehabilitation scheme notwithstanding the objections from the secured creditors.

9. Mr DA Dave, learned senior counsel for the petitioner Company submits that since all the secured creditors including the IDBI and other financial institutions and banks are agreeable to the relevant terms and conditions applicable to the financial institutions and banks as set out in the draft rehabilitation scheme dated 8.10.1999 at Annexure "U" to the petition (Pg. 196), the petitioner is not interested in adjudication of the contentions raised in the original petition and the petitioner Company now merely requests the Court to sanction the aforesaid draft rehabilitation scheme so that the petitioner Company can proceed with the implementation of the scheme in all other respects as well. Mr Dave, however, points out that although there is no dispute raised by any debenture holder about the repayment package applicable to the debenture holders numbering about 55000, some clarification is required to

be made regarding the objections which were initially raised by the IDBI regarding the mode of securing consent of the debenture holders.

10. In this connection, it is necessary to set out the relevant paragraph of the draft rehabilitation scheme dated 8.10.1999 applicable to the debenture holders.

"C. Debenture holders (Sacrifices - Rs. 62 lakh
(Trustee - IDBI)

(i) to waive 50% interest accrued till September 30, 1998;

(ii) to fund the balance 50% overdue interest @ 15% p.a. repayable in 2 equal instalments in April 2003 and April 2004;

(iii) interest @ 15% p.a. would be payable on the principal amount w.e.f. October 1, 1998;

(iv) the debentures would be redeemable in 2 equal instalments in April 2003 and April 2004."

11. Mr Dave points out that a proposal less favourable to the debenture holders as compared to the aforesaid proposal was placed before a duly convened meeting of the debenture holders in August, 1997 which meeting was chaired by the IDBI as a debenture trustee. The said proposal provided for waiver of full interest from 1.7.1994 till the approval of the scheme. Mr Dave further states that the said proposal was accepted at the meeting of the Debenture Holders. The only objection which was raised by the IDBI in connection with the repayment to debenture holders was that the consent of each individual debenture holder to the draft scheme should be obtained and unless the same is done, the rescheduling cannot be done. The petitioner Company stated at the said meeting that it would make a request to the BIFR for waiver of securing approval of each and every debenture holder. Mr Dave states that the aforesaid statements are made on instructions received from Mr SK Sharma, Head (Legal) of the petitioner Company who is present before the Court.

Mr Dave states that since the BIFR had rejected the scheme on the ground of the objections raised by the secured creditors about the mode of payment of 50% interest and determination of the market value of the

equity shares of the petitioner Company, the occasion did not arise for requesting the BIFR to permit waiver of seeking approval of each and every debenture holder. Mr Dave, however, point out that neither at the duly convened meeting of the debenture holders nor at any other point of time has any debenture holder objected to the concession required to be given by the debenture holders as per the draft scheme i.e. regarding waiver of 50% interest accrued till September 30, 1998.

12. Mr RM Desai, Mr Singhi, Mr RD Dave and the other learned counsel appearing for the financial institutions and banks state that they have no objection to the Court granting the request being made on behalf of the petitioner Company for waiver of seeking approval of each individual debenture holder.

13. When the sick industrial Company in question is proposed to be rehabilitated as per the draft scheme dated 8.10.1999 at Annexure "U" to the petition and when all the financial institutions have agreed to the draft scheme whereunder they have also made sacrifices to the tune of approximately Rs.1315 lakhs and the banks i.e. BOB and UBI have given sacrifices to the tune of Rs.285 lakhs approx. in respect of term loans and approximately Rs. 100 lakhs with respect to the working capital, (all these figures of sacrifices as stated in the draft scheme are taken as approximate figures), it appears that when the duly convered meeting of the debenture holders had agreed to accept or less favourable proposal earlier and the sacrifices which the debenture holders are required to make under the draft rehabilitation scheme do not appear to be unreasonable so as to block the sanction and implementation of the rehabilitation scheme merely on the ground that the approval of each individual debenture holder was not sought to the draft scheme. The Court would like to leave this issue open even while sanctioning the draft rehabilitation scheme as circulated with the BIFR's notice dated 8.10.1999 at Annexure "U" to the petition.

14. It is true that ordinarily it would be for the BIFR to sanction the draft rehabilitation scheme. In the facts and circumstances of the instant case, it appears that the only ground on which the BIFR rejected the scheme and the AAIFR confirmed the said order was that the financial institutions were not agreeable to the manner of determining the market price of equity shares of the petitioner Company which were to be offered to the financial institutions in lieu of 50% interest which was to be paid to them. The institutions had already agreed

to waiver of 50% interest till 30.9.1998. Hence, the scheme would have failed only because of this hitch about interpretation of the formula for determination of the market price of the equity shares of the petitioner Company. Since that impediment is already cleared on account of the express and positive consent given by all the financial institutions and banks to accept 50% interest agreed to be accepted under the scheme, in cash payments instead of equity shares of the petitioner Company, and since the petitioner Company has already paid more than Rs.20 Crores by way of principal and interest amount of the secured creditors like financial institutions and banks and they have already received the same, and considering the fact that the meeting of the debenture holders was convened after giving notice/s to the individual debenture holders as stated by the learned counsel for the petitioner and at that time even a less favourable proposal was accepted at the said meeting, this Court does not see any reason not to sanction the draft scheme dated 8.10.1999 at Annexure "U" to the petition.

15. It is also required to be noted that apart from the learned counsel appearing for the financial institutions and banks who have expressly agreed to the sanction to the draft rehabilitation scheme dated 8.10.1999, none of the other respondents have objected to the reliefs prayed for by the petitioner being granted.

16. In view of the above discussion, the following order is passed :-

The order dated 16.3.2000 of the BIFR (Annexure "B") and the order dated 8.5.2000 of the AAIFR (Annexure "A") are hereby quashed and set aside. The draft rehabilitation scheme circulated alongwith the BIFR notice dated 6.10.1999 at Annexure "U" to the petition is hereby sanctioned and all the respondents including the BIFR are directed to proceed for implementation of the scheme as sanctioned hereinabove.

Rule is made absolute to the aforesaid extent. No order as to costs.

17. The main petition as well the Civil Application are disposed of in terms of the aforesaid directions.

(M.S. Shah, J.)

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